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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-6**

12 **CHERYL ANN OLIPHANT**
2118 Wilshire Blvd., Apt. 801
13 Santa Monica, CA 90403

A C C U S A T I O N

14 **Registered Nurse License No. 276484**

15 **Public Health Nurse Certificate No. 57574**

16 Respondent.
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19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 2. On or about March 31, 1977, the Board of Registered Nursing issued Registered
25 Nurse License Number 276484 to Cheryl Ann Oliphant (Respondent). The Registered Nurse
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on February 28, 2011, unless renewed.
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3. On or about June 20, 1997, the Board of Registered Nursing issued Public Health Nurse Certificate Number 57574 to Cheryl Ann Oliphant (Respondent). The Public Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2011, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

7. Section 2761 of the Code states, in part, as follows:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

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(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it. . . .”

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1 8. Section 2725 of the Code states, in pertinent part:

2 "(a) In amending this section at the 1973-74 session, the Legislature recognizes that
3 nursing is a dynamic field, the practice of which is continually evolving to include more
4 sophisticated patient care activities. It is the intent of the Legislature in amending this section at
5 the 1973-74 session to provide clear legal authority for functions and procedures that have
6 common acceptance and usage. It is the legislative intent also to recognize the existence of
7 overlapping functions between physicians and registered nurses and to permit additional sharing
8 of functions within organized health care systems that provide for collaboration between
9 physicians and registered nurses. These organized health care systems include, but are not
10 limited to, health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of
11 Division 2 of the Health and Safety Code, clinics, home health agencies, physicians' offices, and
12 public or community health services.

13 (b) The practice of nursing within the meaning of this chapter [the Nursing Practice Act]
14 means those functions, including basic health care, that help people cope with difficulties in daily
15 living that are associated with their actual or potential health or illness problems or the treatment
16 thereof, and that require a substantial amount of scientific knowledge or technical skill, including
17 all of the following:

18 (1) Direct and indirect patient care services that ensure the safety, comfort, personal
19 hygiene, and protection of patients; and the performance of disease prevention and restorative
20 measures.

21 (2) Direct and indirect patient care services, including, but not limited to, the
22 administration of medications and therapeutic agents, necessary to implement a treatment, disease
23 prevention, or rehabilitative regimen ordered by and within the scope of licensure of a physician,
24 dentist, podiatrist, or clinical psychologist, as defined by Section 1316.5 of the Health and Safety
25 Code.

26 (3) The performance of skin tests, immunization techniques, and the withdrawal of human
27 blood from veins and arteries.

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1 (4) Observation of signs and symptoms of illness, reactions to treatment, general behavior,
2 or general physical condition, and (A) determination of whether the signs, symptoms, reactions,
3 behavior, or general appearance exhibit abnormal characteristics, and (B) implementation, based
4 on observed abnormalities, of appropriate reporting, or referral, or standardized procedures, or
5 changes in treatment regimen in accordance with standardized procedures, or the initiation of
6 emergency procedures.

7 (c) 'Standardized procedures,' as used in this section, means either of the following:

8 (1) Policies and protocols developed by a health facility licensed pursuant to Chapter 2
9 (commencing with Section 1250) of Division 2 of the Health and Safety Code through
10 collaboration among administrators and health professionals including physicians and nurses.

11 (2) Policies and protocols developed through collaboration among administrators and
12 health professionals, including physicians and nurses, by an organized health care system which
13 is not a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of
14 Division 2 of the Health and Safety Code.

15 The policies and protocols shall be subject to any guidelines for standardized procedures
16 that the Division of Licensing of the Medical Board of California and the Board of Registered
17 Nursing may jointly promulgate. If promulgated, the guidelines shall be administered by the
18 Board of Registered Nursing. . . ."

19 9. California Code of Regulations, title 16, section 1442, states:

20 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
21 the standard of care which, under similar circumstances, would have ordinarily been exercised by
22 a competent registered nurse. Such an extreme departure means the repeated failure to provide
23 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
24 situation which the nurse knew, or should have known, could have jeopardized the client's health
25 or life."

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10. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

11. California Code of Regulations, title 16, section 1443.5 states, in part:

"A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

• • •

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed."

COST RECOVERY

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

STATEMENT OF FACTS

13. In July, 2008, Respondent was employed by Associated Health Professionals, Inc., (AHP) as a registry nurse. On or about July 28, 2008, Respondent was assigned to work at Good Samaritan Hospital on the 7:00 p.m. to 7:00 a.m. shift. One of the patients she was assigned to

1 care for that day was Salvatore M.,¹ an 80 year old male patient. Respondent had cared for the
2 patient prior to the July 28th shift.

3 14. The patient was incontinent of urine and his skin was excoriated due to the
4 incontinence. The patient was diabetic and on July 28th, the physician ordered 2 mg of
5 Coumadin for the patient. At 4:15 p.m. on July 28, 2008, the physician noted that the patient's
6 urine was "clear."

7 15. Although the patient has previously had a foley catheter, he did not have a foley
8 catheter on July 28, 2008. In fact, the foley was discontinued on or about July 14, 2008. Patient
9 records also indicated that the patient had an "external" catheter on July 17, 2008.

10 16. At about 10 p.m. on July 28th, without consulting the physician or obtaining a
11 physician's order, Respondent inserted a foley catheter into the patient. Urine returned through
12 the foley catheter was "cranberry" in color. At around 12:00 a.m., the patient's urine stopped
13 flowing through the foley catheter and Respondent removed the foley. The patient's urine was
14 "blood tinged with clots." The case management note for July 29, 2008 indicated, "Traumatic
15 Foley insertion requiring pt. return to OR." The patient had to undergo additional surgery due to
16 a ruptured prostate.

17 17. Following the incident with the patient, AHP terminated Respondent's employment.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Incompetence, Negligence and/or Gross Negligence)**

20 18. Respondent is subject to disciplinary action under section 2761, subdivision (a)(1), on
21 the grounds of unprofessional conduct in that Respondent committed acts of incompetent and/or
22 gross negligence, with the meaning of California Code of Regulations, title 16, sections 1442,
23 1443, and 1443.5, involving the care and treatment of Patient Salvatore M. The circumstances
24 are described more fully in paragraphs 13 through 17, above, and as follows:

25 a. Although noted in the nursing notes, Respondent failed to call or inform the physician
26 that the patient was bleeding and had clots coming through his penis.

27 ¹ In order to protect the patient's privacy, he will be referred to in this pleading only by his
28 first name and first initial of his last name.

1 b. Respondent inserted a foley catheter in the patient without consulting other health
2 care professionals and without obtaining a physician's order.

3 c. The patient's prostate was ruptured and the patient was required to have emergency
4 surgery.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Violation of Statutes and Regulations / Providing Patient Care**

7 **Services Without a Physician's Order)**

8 19. Respondent is subject to disciplinary action under section 2761, subdivision (d), on
9 the grounds that Respondent violated the requirements of Code section 2725, subdivision (b)(2),
10 in that Respondent failed to obtain a physician's order prior to the insertion of a foley catheter in
11 patient Salvatore M., as more fully set forth in paragraphs 13 through 18, above.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:

- 4 1. Revoking or suspending Registered Nurse License Number 276484, issued to Cheryl
5 Ann Oliphant;
6 2. Revoking or suspending, Public Health Nurse Certificate Number 57574, issued to
7 Cheryl Ann Oliphant;
8 3. Ordering Cheryl Ann Oliphant to pay the Board of Registered Nursing the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and
10 4. Taking such other and further action as deemed necessary and proper.

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13 DATED: 7/1/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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